

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
MERCHANT MARINER'S DOCUMENTS  
Issued to: Tyrone JACKSON Z-433-68-7758-D1

DECISION OF THE COMMANDANT APPEAL  
UNITED STATES COAST GUARD

2242

Tyrone JACKSON

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
MERCHANT MARINER'S DOCUMENTS  
Issued to: Tyrone JACKSON Z-433-68-7758-D1

and

Charles William GAYLES Z-436 82 7837 D1

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 5.30-1.

By order dated 29 August 1978, an Administrative Law Judge of the United States Coast Guard at Houston, Texas, revoked Appellants' seaman's documents upon finding them guilty of misconduct. The specification found proved in each case alleges that while serving on board SS DELTA PARAGUAY under authority of the documents above captioned, on or about 7 July 1978, Appellants, at or about the steering engine room on board DELTA PARAGUAY did wrongfully have in their possession certain narcotics, to wit, marijuana.

The hearing was held in joinder at Houston, Texas, on 20 and 31 July 1978.

At the hearing, Appellants elected to act as their own counsel and entered pleas of not guilty to the charges and specifications.

The Investigating Officer introduced in evidence the testimony of a US Customs Patrol Supervisor and three officers of DELTA PARAGUAY. The following documents were also entered as evidence by the Investigating Officer: (1) affidavits of service and recitation of rights (CG-2639) dated 10 July 1978; (2) Certification of shipping Articles for DELTA PARAGUAY on 7 July 1978; (3) certified photocopy of official logbook; (4) a customs receipt; (5) color photograph of substance found on board DELTA PARAGUAY; (6) chain of custody for marijuana; (7) a laboratory report from the City of Houston Police Department.

Appellant Jackson offered his own testimony in his defense and as a witness for Appellant Gayles.

At the end of the hearing, the Administrative Law Judge rendered decisions in which he concluded that the charges and specifications had been proved. He then entered orders revoking all documents issued to Appellants.

The decisions were served by 1 September 1978. Appeal was timely filed, and perfected on 22 May 1979.

### FINDINGS OF FACT

On all dates in question Appellants Jackson and Gayles were serving as oiler and wiper, respectively, under authority of their seamen's certificates, aboard SS DELTA PARAGUAY.

On 5 July 1978, at sea, an assistant engineer officer of the vessel, while inspecting the after steering-engine room, discovered two bags of what he suspected to be marijuana. The bags were concealed from casual observation over against the skin of the ship. He reported this to the master. After consulting with shoreside law enforcement authorities, the master left the space undisturbed in hope that those connected with the cache would disclose themselves.

On the evening of 7 July, the master's telephone in his quarters rang but when he answered the connection was broken. The master suspected that the call might have been a ruse to ascertain his presence in his quarters, and summoning the engineer, he proceeded to the after steering-engine room. Seeing two men, later identified as Appellants, inside, he locked them in the room and proceeded to report to the authorities whose advice he was following. The two officers immediately, then, returned to the locked room where they found Appellants seeking to make their way out with the use of a master key which neither had authority to have in his possession.

The bags had been moved from the place of partial concealment to the deck near the door. The seizure was impounded. After arrival of the vessel at Houston, Texas, with proper chain of custody, the bags were determined to have held 18 and 12 pounds of marijuana.

### BASES OF APPEAL

The cases against Appellants here were heard in joinder. Both have the same counsel on appeal and the arguments presented are the same for both, so that this single decision on appeal disposes of both matters.

It is argued that:

- (1) the charges and specifications were over-broad and vague;
- (2) Appellants were entitled to, and did not receive the benefit of, free, appointed counsel;
- (3) the evidence does not support the allegations;

(4) The order of revocation was unduly harsh.

APPEARANCE: S. Reed Morgan, Esq., Shelton & Morgan, New Orleans, Louisiana.

#### OPINION

##### I

The first stated ground for appeal is without merit. The specification plainly states a wrongful possession of marijuana and, apart from the basic considerations of what constitutes misconduct under the statute, there are specific regulations giving extra notice as to possession of marijuana in these proceedings. 46 CFR 5.03-3; 5.03-4; 5.03-5.

##### II

Appellants were not entitled to free, appointed counsel in the matter since these proceedings are not criminal and the Sixth Amendment (as well as court decisions relevant thereto) does not apply. Appellants may be misled by the title "Administrative Law Judge," but the assertion that the hearing was a trial in "a Coast Guard Court" is incorrect. 46 CFR 5.01-20. It is sufficient that Appellants were advised of their right to counsel under the statute (R.S. 4450) when the notices were served, as they were again when the hearing opened.

##### III

Despite the fact that Appellant Jackson testified in his own behalf, and as a witness for Appellant Gayles, that he had merely noticed the bagged marijuana in the steering engine compartment and had nothing to do with it otherwise, the evidence in support of the charges was so strong that the Administrative Law Judge could hardly have found otherwise.

It is true, as Appellants contend, that no marijuana was found, on subsequent search, in their quarters. But the circumstances of being found in a compartment in which they had no business to be, to which access had been gained by a key which neither had any business to have, and having moved the two previously concealed bags of marijuana, could not but have been strongly persuasive of the possession of the material by the Appellants.

There was such substantial and probative evidence of the wrongful possession that the findings cannot be held otherwise than fully supported.

#### IV

With respect to the severity of the order, Appellants argue that NTSB Order No. EM-66 is controlling and requires a reduction of the order of revocation to one of six months' suspension. In that case, a revocation order had been sustained (Decision on Appeal No. 2065) on findings that the party had been wrongfully in possession of marijuana and had assaulted and battered a ship's officer. The Safety Board said of the case that the "first offense involving marijuana ... should be considered in the discretionary application of sanction pursuant to 46 U.S.C. 239(g)" and this view gave rise to a holding that a six month suspension for the marijuana offense was adequate. The Board also said, with respect to the other offense found proved, "Inasmuch as the Commandant's regulations specifically provide for six-month suspension in the case of a first offense of assault and battery, we have concluded that the revocation of Appellant's document should be reduced to a 1-year suspension."

The Board's rationale here is worthy of note because the regulations do not specifically provide for any other in cases of assault and battery, since 46 CFR 5.20-165 makes clear that the table provided is for "guidance" only and is not a limitation upon orders by administrative law judges, while 46 CFR 5.03-4 does in fact limit administrative law judges generally to orders of revocation in marijuana cases. As the Acting Chairman of the Board pointed out in EM-66 the majority had not given proper regard to section 5.03-4.

This section is still binding upon administrative law judges, the action of the Board in EM-66 is not controlling, and thirty pounds of marijuana, shared by the two Appellants, do not give a hint of the "experimentation" considered as possible basis for a treatment of less than revocation even had Appellants so asserted at hearing.

#### CONCLUSION

In light of the foregoing, I find that there is sufficient evidence of a reliable and probative nature to support the specification and the charge of misconduct on the part of Appellants.

#### ORDER

The orders of the Administrative Law Judge dated at Houston, Texas on 29 August 1978, are AFFIRMED.

R. H. SCARBOROUGH

Vice Admiral, U. S. Coast Guard  
ACTING COMMANDANT

Signed at Washington, D.C., this 2nd day of April 1981